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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,516	06/09/2006	Toshiki Ohya	292364US3PCT	1027
22850	7590	01/27/2009		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
NGUYEN, TU MINH				
ART UNIT		PAPER NUMBER		
3748				
NOTIFICATION DATE		DELIVERY MODE		
01/27/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com

oblonpat@oblon.com

jgardner@oblon.com

### Office Action Summary

**Application No.**

10/582,516

**Applicant(s)**

OHYA ET AL.

**Examiner**

TU M. NGUYEN

**Art Unit**

3748

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

### **DETAILED ACTION**

1. An Applicant's Amendment filed on October 29, 2008 has been entered. Claim 1 has been amended. Overall, claims 1-2 are pending in this application.

#### ***Claim Objections***

2. Claim 1 is objected to because on line 7 of the claim, "can flow" should read --flow-- because the phrase "can" renders the claim indefinite. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**4. Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takegami (U.S. Patent 5,360,081).**

Re claim 1, as shown in Figure 2, Takegami discloses an exhaust emission control device comprising:

- a muffler (15) having a casing connected for receiving engine exhaust gases from an exhaust pipe (14);

- a particulate filter (26) arranged in the casing so as to receive the exhaust gases, wherein at least a portion of the periphery of the particulate filter is spaced from the casing to define a space (where baffles (22) are located) in the casing, and surrounding the particulate filter, through which the exhaust gases flow, whereby the space in the casing can muffle sound from the exhaust gases;

- a recess (where oxygen sensor (31) is located) at a measurement detecting area at the casing of the muffler, the recess creating concave extending through the space surrounding the particulate filter to reach the particulate filter; and

- an oxygen sensor (31) arranged to penetrate a deepest portion of the recess.

Takegami, however, fails to disclose that a temperature sensor is also arranged to penetrate a deepest portion of the recess.

In Takegami, a temperature sensor (38) is utilized to detect a temperature of the particulate filter, wherein the temperature sensor is located in an area of the muffler, which does not have a baffle arrangement (34, 36, 37) and a recess to protect the sensor. Thus, in order to protect said temperature sensor, it would be at least obvious to one having ordinary skill in the art at the time of the invention was made, to realize that the temperature sensor in Takegami should be arranged in the recess and to penetrate a deepest portion of the recess with its thermocouple reaching the particulate filter.

Re claim 2, in the control device of Takegami, the recess is in the form of a cup (as clearly shown in Figure 2); and an operation space is secured around the temperature sensor penetrating the recess to allow for operation of a tool for attachment/detachment of the temperature sensor.

***Response to Arguments***

5. Applicant's arguments with respect to the references applied in the previous Office Action have been fully considered but they are moot in view of the new ground(s) of rejection.

***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office Action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Prior Art***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and consists of one patent and one patent application: Coral et al. (U.S. Patent 6,058,698) and Joost et al. (U.S. Patent Application 2004/0154860) further disclose a state of the art.

***Communication***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Tu Nguyen whose telephone number is (571) 272-4862.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Thomas E. Denion, can be reached on (571) 272-4859. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TMN  
January 20, 2009

/Tu M. Nguyen/  
Tu M. Nguyen  
Primary Examiner  
Art Unit 3748